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John A. O'Toole, Esq.
P. O. Box 1113
Minneapolis, MN 55440

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OFFICE OF PETITIONS

In re Application of
Mary K. Toth, et al.
Application No. 09/483,039
Filed: January 18, 2000
Attorney Docket No. 5212USA

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ON PETITION

This is a decision on the petition filed April 28, 2003, under 37 CFR 1.47(a), which is being treated under 37 CFR 1.183 to waive 37 CFR 1.131 to the extent that it requires that all of the named inventors execute the declaration filed thereunder.

The petition is granted to the extent infra.

Petitioner asserts that while both of the named inventors contributed to the conception of the claimed invention which is under rejection, only inventor Arne H. Brauner, has agreed to execute the declaration under 37 CFR 1.131 in support of establishing conception of the claimed invention prior to June 3, 1999.

As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration under 37 CFR 1.131 executed by less than all of the inventors of the claimed subject matter in question.

Under the facts presented, it is agreed that justice requires waiver of the rules to the extent that they require Mary Toth to declare. However, the favorable decision herein does not relieve applicants from their burden to establish that the invention was completed before the date of the reference and that the claimed invention was the product of the joint inventors. See In re Carlson, 79 F.2d. 900, 27 USPQ 400 (CCPA 1935).

The application file is being forwarded to Technology Center 1700 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to Marianne Morgan at (703) 306-3475, or in her absence, to the undersigned at (703) 305-1820.

A handwritten signature in black ink, appearing to read "Brian Hearn", with a stylized flourish at the end.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy